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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,245	09/27/2002	Werner J. Windbergs	1001.99001	2121

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EXAMINER
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BRAHAN, THOMAS J

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/065,245

Applicant(s)

WINDBERGS, WERNER J.

Examiner

Thomas J. Brahan

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. New claims 15-18 in the amendment filed September 22, 2003 have been renumbered as 18-21, as 37 C.F.R. 1.26.

2. Newly submitted claims 18-21 are directed to an invention that is independent or distinct from the invention originally claimed. The original invention recited in claims 14 and the invention of claims 18-21 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as recited in claims 1-14 does not require the particulars of the subcombination as claimed such as the "L" beam recited in claim 15. The subcombination recited in claims 18-21 has separate utility as it can be used in other environments, as it is not recited as mounted in a standardized freight container. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

4. Claims 5 and 8-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example:

- a. In claim 5, the term "said plurality of rollers" lacks antecedent basis within the claims. The various rollers should each be noted by a name, such as carriage rollers, second frame rollers or slidable support rollers to avoid the confusion caused by calling them first, second, and third rollers.
- b. In claim 8, line 17 and line 18, the term "the winch" lacks antecedent basis within the claims. Claim 8 provides a basis for a winch carriage, but not for a winch.

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


6. Claims 1-4, 6, 8-11, and 13, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kucharczyk et al in view of SU 1,152,921. Kucharczyk et al shows the basic claimed combination of a crane hoist apparatus for moving items into and out of a containerized cargo enclosure. It varies from claim 1 by having a double beam bridge (46) instead of a single beam bridge. SU '921 shows a single beam bridge and states that its advantages are lighter weight and simpler construction. It would have been obvious to one of ordinary skill in the art to modify the containerized cargo crane of Kucharczyk et al by substituting a single beam bridge arrangement for the double beam bridge (46) to reduce the weight of the crane and to simplify its construction, as taught by SU '921. The winch carriage of SU '921 does not extend below the frame that supports the single beam bridge, as recited in lines 13-15 of claim 1. The crane of Kucharczyk et al has a slidable support to the exterior of the container, as recited in claims 2, 3, 9, and 10. The angle beam of SU '921 is an angle beam, as recited in claim 8.

7. Claims 5 and 12, as best understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kucharczyk et al in view of SU '921, as applied above to claim 1, and further in view of Dunbar 4,297,071, Kucharczyk et al, as modified, shows the basic claimed crane apparatus but varies from claims 5 and 12 by not having large and small rollers for moving the second beam (30) along the first frame (28, 28). Figure 10 of Dunbar '071 shows a similar crane apparatus with small adjustable alignment rollers (50) for maintaining the second beam perpendicular to the first beam. It would have been obvious to one of ordinary skill in the art to modify the crane apparatus of Kucharczyk et al by mounting its second beam with adjustable alignment rollers, to maintain the second beam perpendicular to the first beams, as taught by Dunbar '071.

8. Claims 7 and 14, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kucharczyk et al in view of SU '921, as applied above to claim 1, and further in view of Dunbar '071. Kucharczyk et al, as modified, shows the basic claimed crane apparatus but varies from claims 7 and 14 not having plural rollers on the winch carriage. Figure 10 of Dunbar '071 shows a small adjustable alignment rollers (50) for maintaining one beam perpendicular to the other beam. It would have been obvious to one of ordinary skill in the art to modify the crane apparatus of Kucharczyk et al by providing its winch carriage with adjustable alignment rollers to main the carriage perpendicular to its beam, as taught by Dunbar '071.

9. Applicant's arguments in the amendment filed with the RCE have been considered, but are deemed moot in view of the above new rejections.

10. An inquiry concerning this action should be directed to Examiner Thomas J. Brahan at telephone number (703) 308-2568 on Mondays through Fridays from 9:30-7:00 EST. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The new fax number for all patent applications is (703) 872-9306.

 12/14/23  
**THOMAS J. BRAHAN**  
**PRIMARY EXAMINER**